No. 05-18-00567-CV

In the Fifth Court of Appeals
Dallas, Texas

DARLENE C. AMRHEIN,
Appellant

v.

ATTORNEY LENNIE BOLLINGER, *et al.*
Appellees

Appeal From Cause No. 006-02654-2017
County Court at Law No. 6, Collin County, Texas
The Honorable Judge Jay Bender Presiding

BRIEF OF APPELLEES

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STATEMENT OF THE CASE[1]

Nature of the Case: This appeal arises from the trial court's order dismissing Appellant/Plaintiff Darlene Amrhein's ("Amrhein") legal malpractice lawsuit against her former attorney, Lennie Bollinger and his law firm, Wormington & Bollinger Law Firm (collectively, "Bollinger"). Bollinger first sought a dismissal under Rule 91a on all of Amrhein's non-legal malpractice claims. (1 CR 140-158). After being granted a Rule 91a dismissal on all claims but the legal malpractice claim, Bollinger then filed his motion to declare Amrhein a vexatious litigant. (1 CR 740-1067). The trial court entered an order declaring Amrhein a vexatious litigant and required Amrhein to post security by May 5, 2018 at 5:00 p.m. (2 CR 1934-1935). Amrhein did not provide the required security. (2 CR 2082).

Course of Proceedings: The trial court ruled on the Rule 91a motion to dismiss by written submission and without conducting a hearing as permitted by Rule 91a. (1 CR 429). On April 5, 2018, the trial court conducted a hearing on the motion to declare Amrhein a vexatious litigant. (2 CR 1518).

Trial Court's Disposition: On January 30, 2018, the trial court granted the Rule 91a motion to dismiss. (1 CR 676-677). On April 5, 2018, the trial court entered an order declaring Amrhein to be a vexatious litigant. (2 CR 1934-1935). On May 14, 2018, the trial court entered an Order dismissing Amrhein's claims with prejudice. (2 CR 2082).

[1] Bollinger is dissatisfied with, and objects to, Appellant's Statement of the Case and re-asserts the Statement of the Case herein because Appellant's Statement of the Case fails to comply with Texas Rule 38.1(d) of Appellate Procedure in that it does not "state concisely the nature of the case . . . , the course of proceedings, and the trial court's disposition of the case" as is required by Rule 38.1(d). *See* TEX. R. APP. P. 38.1(d). Further, Appellant's Statement of the Case is not supported by record references. *Id.*

STATEMENT REGARDING ORAL ARGUMENT

Bollinger does not believe oral argument is warranted in this case. The record on appeal, along with the legal arguments presented in the briefing, are sufficient to allow this Court to decide the issues in this appeal. The legal issues before this Court on appeal are straightforward and have been decided under Texas authority.

Appellant has requested oral argument by way of telephone due to various health concerns cited. *See* App.'s Br. at 2. Although Bollinger does not believe any oral argument is needed in this appeal, should this Court find otherwise, Bollinger objects to conducting oral argument by telephone and would request that any oral argument be presented in person at the Dallas Court of Appeals. To the extent this Court deems oral argument necessary, Bollinger is ready and willing to appear for argument.

RECORD REFERENCES

The record on appeal consists of a two-volume Clerk's Record and one-volume Supplemental Clerk's Record. The Clerk's Record will be cited as "(__CR __)." The Supplemental Clerk's Record will be cited as "(Supp. CR __)." No Reporter's Record was filed.

ISSUES PRESENTED[2]

1. Amrhein has failed to adequately brief her complaints despite having an opportunity to file an amended Appellant's Brief. This Court should affirm the trial court's judgment below for Amrhein's failure to preserve her challenges on appeal.

2. County Court at Law No. 6 had jurisdiction to hear Amrhein's lawsuit against Bollinger because she admitted that her claims sought relief of no more than $200,000.

3. Amrhein filed unsubstantiated motions to recuse and objections to the judges in both County Court at Law No. 5 and No. 6. This Court must overrule any challenges Amrhein attempts to raise concerning the rulings on the motions to recuse and objections to the judges of County Court at Law No. 5 and No. 6.

    a. The Presiding Judge of the First Administrative Judicial Region, Judge Mary Murphy, followed the proper procedure in deciding Amrhein's motion to recuse Judge Wilson and properly assigned Amrhein's lawsuit to another county court at law in Collin County.

    b. The Presiding Judge of the First Administrative Judicial Region, Judge Ray Wheless, properly denied Amrhein's tertiary motion to recuse Judge Bender, County Court at Law No. 6 because Amrhein failed to raise any legally sufficient grounds warranting Judge Bender's recusal.

    c. Amrhein failed to adequately brief any issue related to the recusal rulings and ultimate assignment of the case to Judge Bender.

4. Bollinger filed a motion to declare Amrhein a vexatious litigant. The trial court's rulings related to Amrhein's declaration as a vexatious litigant must be affirmed.

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[2] Bollinger is dissatisfied with, and objects to, Amrhein's Issues Presented section, and re-states the Issues Presented section herein because Amrhein's Issues Presented section includes a long list of issues that are not before this Court. Moreover, many of the issues Amrhein attempts to set forth make absolutely no sense as they are just a list of various legal terms cut and paste from unknown sources without any coherency. *See* App.'s Br. at 3-5.

a. The trial court properly proceeded with a hearing on Bollinger's motion to declare Amrhein a vexatious litigant;

b. The trial court did not abuse its discretion when it issued its order declaring Amrhein to be a vexatious litigant; and

c. The trial court properly dismissed Amrhein's lawsuit when she failed to provide security no later than May 5, 2018 at 5:00 p.m. as required by the court's April 5, 2018 order declaring Amrhein a vexatious litigant.

d. Amrhein failed to adequately brief any issue related to any of the trial court's rulings pertaining to the motion to declare Amrhein a vexatious litigant and ultimate dismissal for failure to post security as required by the order declaring Amrhein a vexatious litigant.

5. Bollinger filed a Rule 91a motion to dismiss on Amrhein's non-legal malpractice claims, which was granted by the trial court. Amrhein does not appear to challenge this order on appeal. To the extent this Court could find otherwise, the trial court's rulings related to the Rule 91a motion must be affirmed.

    a. The trial court was well within its discretion in refusing to stay the case and denying Amrhein's request to continue the hearing on the Rule 91a motion to dismiss.

    b. The trial court properly granted Bollinger's Rule 91a motion.

    c. Amrhein failed to adequately brief any issue related to any of the trial court's rulings pertaining to the Rule 91a motion to dismiss resulting in Amrhein having waived any challenge to the order denying the stay and continuance and the order granting the Rule 91a dismissal.

INTRODUCTION

Amrhein's Appellant's Brief is replete with briefing errors and nonsensical verbiage, much of which has absolutely nothing to do with the trial court's orders at hand. *See* App.'s Br. in its entirety. Because of Amrhein's failure to present any coherent argument on appeal, it is unclear exactly what orders or rulings Amrhein seeks to challenge on appeal. The trial court's rulings in this case can be categorized into three main areas: (1) Amrhein's efforts to recuse the judges in the county courts at law; (2) Bollinger's Rule 91a motion to dismiss Amrhein's non-professional malpractice claims; and (3) Bollinger's motion to declare Amrhein a vexatious litigant and request for dismissal when Amrhein failed to post security as ordered by the trial court. As shown in more detail below, all of the trial court's rulings were based in law and fact. Amrhein has not presented one sound reason to support a reversal of any of the trial court's orders. Thus, the trial court's orders must be affirmed.

STATEMENT OF FACTS[3]

A. Bollinger's representation of Amrhein.

In early spring of 2016, Amrhein retained Bollinger to file a claim against her former tenant, David Schroeder. (1 CR 777). The scope of Bollinger's representation was limited to claims against Schroeder for back rent and property he allegedly took from Amrhein. (1 CR 777, 786-790). Based on information from Amrhein, Bollinger prepared an original petition to file in the Justice Court and sent it to Amrhein for her review and approval. (1 CR 777-778, 782-784, 786-790, 965-967). The original petition alleged damages of $2,300, and requested discovery from Schroeder in the form of requests for disclosure and requests for admission. (1 CR 786-790). Amrhein approved the petition on April 13, 2016, and Bollinger filed it on April 26, 2016. (1 CR 782-784, 786-790). Schroeder filed an answer denying the allegations on May 18, 2016. (1 CR 792-797).

On December 12, 2016, Amrhein faxed Bollinger a 42+ page memo regarding new claims she wanted to bring. (1 CR 778, 848-894). These claims

[3] Bollinger is dissatisfied with, and objects to, Amrhein's Statement of Facts because Amrhein's Statement of Facts does not comply with Texas Rule 38.1 of Appellate Procedure's briefing requirements. Amrhein's Statement of Facts does not "state concisely and without argument the facts pertinent to the issues or points presented" and is not sufficiently "supported by record references." *See* App.'s Br. 1-20; *see also* TEX. R. APP. P. 38.1(g). Although Amrhein lists out various record cites on pages 44-46 of her Brief, she does not link the record cite with the statements made in her Brief. *See* App.'s Br. at 44-46. This Court is not required to, and should not, sift through the voluminous record to attempt to find support for Amrhein's statements. *See Bolling v. Farmers Branch ISD*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.). Because Amrhein failed to comply with the Rule 38.1's briefing requirements, this Court should dismiss the appeal. *See id.* At the very minimum, this Court should disregard Amrhein's Statement of Facts and consider Bollinger's re-stated Statement of Facts herein.

were not relevant to the issue of past-due rent, lacked merit and would not have led to a successful outcome at trial. (1 CR 778). For example, Amrhein complained that Schroeder drank wine every night which she had to pay for; that he called her fat; that he said he would not have sex with her; that he spent time at a gun shop; and that he lied to her about being a smoker, about being religious, and failed to disclose his former wives and divorces. (1 CR 848, 854, 858-859, 864, 865, 874).

On December 14, 2016, Amrhein and Bollinger met to discuss her case and the new allegations she wanted to bring. (1 CR 778, 819-826). During the meeting, Bollinger explained to Amrhein that he was not comfortable asserting any of the claims described in the 42+page memo. (1 CR 778). On December 28, 2016, Bollinger sent Amrhein a follow up email stating that while she was certainly able to make whatever claims she liked, Bollinger would not agree to make those claims because Bollinger did not agree that the claims had merit. (1 CR 778, 830). Bollinger suggested that due to the differing opinions regarding claims that should be made, strategy and outcomes, Amrhein may want to obtain different counsel. (1 CR 778, 830).

On December 29, 2016, Amrhein asked Bollinger to continue the case due to medical procedures she was having, and he complied. (1 CR 778, 833-837). After receiving a letter from her medical provider, Bollinger obtained a continuance of the trial date until late June 2017. (1 CR 778, 836).

In April 2017, Amrhein sent two emails to Bollinger that inadvertently went into Bollinger's SPAM filter. (1 CR 778, 838-841). One email again asked Bollinger to agree to amend Amrhein's pleadings to assert the meritless allegations against Schroeder. (1 CR 778, 838-840). In response, Bollinger again explained he would not agree to bring claims that lacked merit and advised he would be filing a motion to withdraw due to their disagreement on how to proceed and the differing views on the claims that could be asserted. (1 CR 778, 844-846).

The court granted Bollinger's motion to withdraw on May 12, 2017. (1 CR 778, 899).

Thereafter, on May 15, 2017, Amrhein, *pro se,* filed a verified amended petition in which she swore that her damages did not exceed $10,000. (1 CR 908). The amended petition also contained additional discovery requests. (1 CR 916-917). On June 29, 2017, Amrhein, *pro se,* filed a verified supplemental petition in which she swore that her damages were $9,775.00. (1 CR 942).

Five months after Bollinger's withdrawal, on October 16, 2017, the court entered an order finding that Amrhein's first amended petition failed to plead damages and therefore Schroeder's motion to dismiss would be granted with prejudice. (1 CR 953). The court's order further found that discovery was not authorized by the court, and **sanctioned Amrhein by ordering that she not file another civil cause of action against Schroeder until first authorized by the**

court. (1 CR 953). The same day, Amrhein filed a request to replead her cause of action, which the court denied on October 18, 2017 because Amrhein sought an award beyond the court's jurisdictional limits in the amount of $13,208.00. (1 CR 955).

Amrhein, *pro se*, appealed her case to the County Court at Law No. 2 of Collin County, Texas. On December 14, 2017, the county court dismissed the appeal for want of jurisdiction. (1 CR 957).

B. Amrhein's lawsuit against Bollinger.

1. Amrhein filed legal malpractice and other causes of action against Bollinger.

Prior to the dismissal of her appeal to the County Court at Law No. 2, and on October 26, 2017, Amrhein sued Bollinger alleging a claim for legal malpractice and approximately twelve other causes of action.[4] (1 CR 20-34). Bollinger answered on November 15, 2017. (1 CR 51-64). On November 27, 2017, Amrhein amended her petition. (1 CR 70-133). In her amended petition, she pled claims of fraud, negligence, negligent misrepresentation, "bad faith" intent cause of action, breach of contract, professional malpractice, breach of fiduciary duty, violations of the DTPA, violations of Texas Rules of Civil Procedure, conspiracy, claims on behalf of Anthony Balistreri, Deceased, or His Estate, claims for violating the

[4] Amrhein's case was originally assigned to County Court at Law No. 2. Amrhein filed a motion to recuse the Honorable Walker of County Court at Law No. 2, which was granted. (2 CR 1869-1873). The case was transferred to the Honorable Dan K. Wilson, County Court at Law No. 5.

Texas Disciplinary Rules of Professional Conduct, violations of Constitutional Rights, and claims of discrimination. (1 CR 70-133).

2. Bollinger sought a Rule 91a motion to dismiss of all but Amrhein's legal malpractice claim.

On December 22, 2017, Bollinger filed his Rule 91a motion to dismiss. (1 CR 140-158). In his motion, Bollinger showed that all of Amrhein's claims, except the professional malpractice claim, had no basis in law or in fact. Many of Amrhein's claims were simply impermissibly fractured legal malpractice claims. Additionally, as a *pro se* litigant, Amrhein could not assert claims in a representative capacity on behalf of a deceased person.[5] Bollinger's motion to dismiss was set for hearing on January 25, 2018. (1 CR 416).

Amrhein sought a continuance of the Rule 91a motion to dismiss hearing and also sought an indefinite stay of her lawsuit citing to health problems and the need for two back surgeries. (1 CR 409-422; 2 CR 1135-1146). Bollinger responded to Amrhein's requests to delay and explained that no continuance was needed because Rule 91a.6 allows the trial court to hear the motion by written submission rather than by oral hearing. (1 CR 423-425). Additionally, as Bollinger explained to the trial court strict deadlines exist under Rule 91a.3 by

[5] Amrhein mentions a potential wrongful death action to be brought on behalf of Anthony Balistreri (Deceased). *See* App.'s Br. at 2-3. Although Bollinger contests that he ever agreed to any representation for such potential lawsuit, Bollinger obtained a dismissal of Amrhein's claim through his Rule 91a motion because legally Amrhein, as *pro se*, could not assert claims against Bollinger as a representative of her deceased father.

which the motion must be ruled upon. (1 CR 424). Because Amrhein had already filed a lengthy written response to the motion, Bollinger requested that the court hear the Rule 91a motion to dismiss by written submission on January 25, 2018. (1 CR 424).

On January 17, 2018, the trial court denied Amrhein's requested continuance and stay and ordered the Rule 91a motion to dismiss be heard by submission on January 25, 2018. (1 CR 429). The next day, Bollinger filed another affidavit to support his attorney's fees and costs requested in his Rule 91a motion to dismiss. (1 CR 430-442).

After Amrhein and Bollinger filed further briefing on the Rule 91a motion, and on January 30, 2018, the trial court granted Bollinger's Rule 91a motion and dismissed all of Amrhein's causes of action except the legal malpractice claim. (1 CR 676-677).

3. Bollinger's second motion for stay and continuance.

On February 6, 2018, Amrhein filed a second motion for stay and continuance citing to her same health issues and need for two surgeries but without any supporting evidence. (1 CR 679-687). She also sought a reconsideration of the trial court's order granting the Rule 91a motion to dismiss. (1 CR 688-739).

4. Bollinger's motion to declare Amrhein a vexatious litigant.

Pursuant to section 11.051 of the Texas Civil Practice & Remedies Code, and on February 9, 2018, Bollinger filed his Motion for Order Determining Plaintiff Amrhein a Vexatious Litigant and Requesting Security ("vexatious litigant motion"). (1 CR 740 - 2 CR 1102). Bollinger's vexatious litigant motion showed there was not a reasonable probability that Amrhein would prevail on her legal malpractice claims, and Amrhein commenced, prosecuted, or maintained in the seven years prior to Bollinger's motion more than five *pro se* litigations that have been finally adversely decided against her. *Id.* Bollinger's motion also showed that after Amrhein's litigation has been finally determined against Amrhein, she repeatedly relitigates or attempts to relitigate, *pro se*, the validity of the determination against the same defendants as to whom the litigation was finally determined. *Id.* Moreover, Amrhein's conduct and pleadings had previously been declared to be frivolous and a pre-filing injunction existed against Amrhein in federal district court. (1 CR 1024-1025).

On February 12, 2018, Bollinger supplemented his motion to include affidavit testimony of the fees and expenses he had incurred to defend himself in Amrhein's lawsuit, as well as the anticipated fees and expenses should the case proceed to trial and through appeal. (2 CR 1103-1125). Such testimony supported

Bollinger's request for Amrhein to post security. (2 CR 1103). Bollinger's vexatious litigant motion was set for hearing for February 23, 2019. (2 CR 1286).

5. Amrhein responded with vague and ambiguous pleadings, and a motion to recuse Judge Wilson.

On February 13, 2018, Amrhein filed her "timely first amended pleadings & 15 notices." (2 CR 1185-1284). Amrhein's amended petition continued to assert vague and ambiguous allegations. *Id.* Most of the 64-page amended pleading was merely a cut and paste of black letter law, and/or commentary on same, from various unidentified sources without tying the law to any alleged facts as to Bollinger. *Id.* She also filed her objections and responses to Bollinger's vexatious litigant motion. (2 CR 1307-1427).

On February 13, 2018, Amrhein filed a motion for recusal of Judge Wilson. (2 CR 1128-1156). Although Judge Wilson initially declined to recuse himself, (2 CR 1157), Judge Wilson amended his order and recused himself and requested that Judge Murphy, the Presiding Judge of the First Administrative Region ("the Presiding Judge"), assign a judge to hear the case. (2 CR 1285). That same day, Judge Murphy signed an order transferring the case to County Court at Law No. 6. (2 CR 1288). Amrhein objected to the transfer to County Court at Law No. 6 claiming that this court only had jurisdiction in cases involving disputed amounts of up to $100,000 and her disputed amount was $200,000. (2 CR 1430-1444). Amrhein also requested another stay in the lawsuit contending that she was unable

to attend the hearing on the motion to declare her a vexatious litigant, which had been previously scheduled for February 23, 2018, until after she recovered from two surgeries, which had not yet been scheduled. (2 CR 1433).

On February 16, 2018, Judge Murphy stayed the matter for two weeks in light of Amrhein's objections and Amrhein's cited medical issues. (2 CR 1445). On March 2, 2018, Judge Murphy signed an order lifting the stay and terminating the case's assignment to her. (2 CR 1445). In her order, Judge Murphy explained that Amrhein's objection to County Court at Law No. 6 was unfounded because it had concurrent jurisdiction with County Court at Law No. 5. (2 CR 1445). Judge Murphy recognized that Amrhein sought an indefinite stay of the case due to medical issues and deferred to Judge Bender of County Court at Law No. 6 to address Amrhein's request for indefinite stay. (2 CR 1445).

6. Amrhein continued to seek a stay of the litigation.

Amrhein continued to seek a stay of the litigation and filed her "Updated Medical Information for 'No Work' in Preparation for Surgery Due to My Health Condition & ADA Federal Law as Required." (2 CR 1467-1481). Bollinger responded and explained, while not unsympathetic to Amrhein's condition and having been willing to reasonably accommodate Amrhein's medical issue, as shown by agreeing to set the Rule 91a motion to dismiss for written submission, none of the materials Amrhein attached to her motion for continuance

demonstrated that she required a continuance for medical issues. (2 CR 1446-1455).

The court scheduled a hearing on Amrhein's continuance request for March 9, 2018. (1 CR 14; 2 CR 1483). Bollinger appeared in person and through counsel but Amrhein failed to appear despite having notice of the hearing. (1 CR 14; 2 CR 1483). The trial court took the motion for continuance under advisement. (1 CR 14). The trial court also contacted Amrhein's doctor as invited by Amrhein. (1 CR 14). On March 12, 2018, Amrhein appeared at the courthouse and filed more documents with the trial court. (1 CR 14). On March 20, 2018, Bollinger requested a hearing on his vexatious litigant motion. (2 CR 1482-1517). Recognizing that Amrhein could make a physical appearance at the courthouse as evidenced by her March 12, 2018 filings, and confirming with Amrhein's doctor that she was not scheduled for any surgery until April 26, 2018 (1 CR 14), the trial court denied the continuance of the hearing on the vexatious litigant motion. (1 CR 14). The trial court set the vexatious litigant motion for hearing on April 5, 2018. (2 CR 1518-1520). Prior to the hearing, Bollinger filed his reply and second supplement to his vexatious litigant motion to include additional evidence of more lawsuit filings by Amrhein. (2 CR 1521-1617). Bollinger also filed additional evidence of his attorney's fees to support his motion. (2 CR 1706-1737).

Amrhein filed additional materials but none defeated the evidence in support of Bollinger's vexatious litigant motion. (2 CR 1738-1838).

7. Amrhein moved to recuse Judge Bender.

On April 2, 2018, just three days before the hearing on the vexatious litigant motion, Amrhein filed a motion to recuse Judge Bender. (2 CR 1839). This was Amrhein's third motion to recuse.[6] As outlined in Bollinger's response to the motion to recuse, the crux of Amrhein's tertiary motion to recuse was her misguided arguments regarding Judge Bender's alleged lack of jurisdiction over her case and her continued attempt to stall the case and/or postpone the upcoming hearing on the vexatious litigant motion. (2 CR 1853). Amrhein continued her mistaken argument that County Court at Law No. 6 had a lower jurisdictional level of $100,000 and her dispute involved a claim for relief up to $200,000. (2 CR 1839).

On April 5, 2018, prior to the hearing on the vexatious litigant motion, the Presiding Judge, Judge Ray Wheless, denied the motion to recuse because Amrhein's motion did not allege any legally sufficient ground warranting recusal. (2 CR 1933, 2020).

[6] Amrhein's case was originally assigned to County Court at Law No. 2. Amrhein filed a motion to recuse the Honorable Judge Walker of County Court at Law No. 2, which was granted. (2 CR 1869-1873). The case was transferred to the Honorable Judge Wilson, County Court at Law No. 5, but Amrhein filed a second motion to recuse requesting that Judge Wilson be recused. (2 CR 1128-1156). This motion to recuse was granted on February 14, 2018. (2 CR 1285).

8. The trial court granted an order declaring Amrhein as a vexatious litigant and ultimately dismissed the case for failure to post security.

On April 5, 2018, the court conducted the hearing on Bollinger's vexatious litigant motion. (2 CR 1934). After a hearing, the trial court entered its order declaring Amrhein to be a vexatious litigant. (2 CR 1934-1935). The order required Amrhein to provide security by obtaining a bond of $160,000 no later than May 5, 2018 at 5:00 p.m. or the case would be dismissed with prejudice. (2 CR 1935). After no security was provided, and on May 14, 2018, the trial court dismissed with prejudice Amrhein's claims against Bollinger and entered a final judgment. (2 CR 2082). On May 15, 2018, Amrhein filed her notice of appeal. (2 CR 2090-2109).

SUMMARY OF THE ARGUMENT

Amrhein presents no reason to this Court to reverse the trial court's rulings. Amrhein's Appellant's Brief is deficient to preserve error. Although she is a *pro se* litigant, Amrhein was still required to state concisely her complaints, to provide succinct, clear, and accurate arguments for why her complaints have merit in law and in fact, to cite legal authority that is applicable to her complaints and to cite appropriate references in the record. Amrhein's Appellant's Brief meets none of these requirements. Thus, Amrhein has waived her attempted challenges to the trial court's rulings.

Even if this Court could find that Amrhein did not waive her challenges, the trial court's rulings should be affirmed. First, the trial court had the requisite jurisdiction to hear Amrhein's case. Second, the trial court did not commit error in its rulings on the recusal motions. Third, the trial court properly denied Amrhein's requested continuances and stays of the litigation. Fourth, the trial court properly granted the Rule 91a motion to dismiss on Amrhein's non-legal malpractice claims. Fifth, the trial court properly declared Amrhein a vexatious litigant. Finally, the trial court properly dismissed the remaining legal malpractice claim when Amrhein failed to post security as ordered by the trial court. As shown in further detail below, this Court should affirm.

ARGUMENT

A. Amrhein's failure to preserve error.

Although appellate courts are to liberally construe *pro se* pleadings and briefs, courts also should hold *pro se* litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. *In re N.E.B.*, 251 S.W.3d 211, 211–12 (Tex. App.—Dallas 2008, no pet.). To do otherwise would give a *pro se* litigant an unfair advantage over a litigant who is represented by counsel. *Id.* at 212. To present an issue to this Court, a party's brief shall contain, among other things, a concise, non-argumentative statement of the facts of the case, supported by record references, and a clear and concise argument

for the contention made with appropriate citations to authorities and the record. TEX. R. APP. P. 38.1. Bare assertions of error, without argument or authority, waive error. *In re N.E.B.*, 251 S.W.3d at 212. When a party, despite notice and an opportunity to cure, fails to adequately brief a complaint, he waives the issue on appeal. *See Bertaud v. Wolner Indus.*, No. 05-15-00620-CV, 2017 WL 1360197, at *2 (Tex. App.—Dallas Apr. 12, 2017, pet. dism'd).

Here, Amrhein had an opportunity to adequately brief her complaints, but she failed to do so. Amrhein's Appellant's Brief fails to set forth a non-argumentative statement of facts supported by record references or any cogent argument with supporting record citations and legal authority. *See* App.'s Br. at 1-20, 22-50. This Court should find that Amrhein waived her issues on appeal and affirm the trial court's judgment. To the extent this Court could find that Amrhein adequately briefed her complaints, Bollinger responds as follows.

B. The trial court had the requisite jurisdiction over Amrhein's lawsuit.

1. Standard of Review.

Whether a court has subject matter jurisdiction over a case is a legal question and reviewed under *de novo* standard of review. *See Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); *A-1 Parts Stop, Inc. v. Sims*, No. 05-14-01292-CV, 2016 WL 792390, *2 (Tex. App.—Dallas Mar. 1, 2016, pet. denied).

2. County Court at Law No. 6 has jurisdiction for cases in which the amount in controversy does not exceed $200,000.

Amrhein suggests that the trial court did not have jurisdiction and that the orders entered in this case are therefore void.[7] *See* App.'s Br. at 34, 41. But the record shows the trial court had subject matter jurisdiction over Amrhein's case.

The Collin County courts at law have concurrent jurisdiction with the district courts for cases in which the amount in controversy exceeds $500 but does not exceed $200,000, excluding mandatory damages, penalties, attorney fees, interest and court costs. TEX. GOV'T CODE § 25.003 (c)(1). Jurisdiction is determined by the amount in controversy at the time the original pleading is filed. *Smith v. Texas Improvement Co.*, 570 S.W.2d 90, 92 (Tex. Civ. App.—Dallas 1978, no writ); *Bowlin v. St. John*, No. 05-98-00141-CV, 2000 WL 798078, *2 (Tex. App.—Dallas June 22, 2000, no pet.). Amrhein filed her original petition in Collin County Court at Law. (1 CR 20-34). In her petition, she sought damages within the County Court at Law's $200,000 limit. (1 CR 30). Thus, County Court at Law No. 6 had subject matter jurisdiction over Amrhein's lawsuit.

C. Amrhein's arguments concerning recusal and assignment of the case to Judge Bender lack merit.

Without any sort of supporting evidence or record citations, Amrhein states that Judge Murphy, the Presiding Judge, assigned "disqualified judges to prevent

[7] Amrhein's argument on this issue is nothing more than bare assertions of error, without proper argument or authority, and thus, Amrhein has waived error. *See* App.'s Br. at 34, 41; *see also In re N.E.B.*, 251 S.W.3d at 212.

administration of justice, errors, obstruction of justice, no proper jurisdictions & claims she said so." *See* App.'s Br. at 23. Although not entirely clear, Amrhein seems to be attacking the rulings on her recusal motions but such weak challenge fails.[8]

1. Standard of Review.

This Court reviews an order denying a motion to recuse for an abuse of discretion. *See In re H.M.S.*, 349 S.W.3d 250, 253 (Tex. App.–Dallas 2011, pet. denied). The movant bears the burden of proving recusal is warranted, and the burden is met only through a showing of bias or impartiality to such an extent that the movant was deprived of a fair trial. *Id.* at 253–54.

2. The trial court did not err in its recusal rulings.

Texas Rule 18a of Civil Procedure governs the procedure courts and parties are to follow when a motion to recuse a judge is filed. *See* TEX. R. CIV. P. 18a. Under Rule 18a, the responding judge, within three business days after the motion is filed, must either: (1) sign and file with the clerk an order of recusal or disqualification; or (2) sign and file with the clerk an order referring the motion to the regional presiding judge. *Id.* If the motion to recuse is granted, the regional

[8] Amrhein's argument on this issue is nothing more than bare assertions of error, without proper argument or authority, and thus, Amrhein has waived error. *See* App.'s Br. at 23; *see also In re N.E.B.*, 251 S.W.3d at 212; *see also Drake v. Walker*, 529 S.W.3d 516, 529 (Tex. App.—Dallas 2017, no pet.).

presiding judge must transfer the case to another court or assign another judge to the case. *Id.* at 18a(g)(7).

On February 13, 2018, Amrhein filed her motion to recuse Judge Wilson. (2 CR 1128-1156). The very next day, on February 14, 2018, Judge Wilson issued an amended order of referral on the motion to recuse and voluntarily recused himself, requesting that the Presiding Judge assign the matter to another judge (2 CR 1285). That same day, Judge Murphy, the Presiding Judge, signed an order transferring the case to County Court at Law No. 6. (2 CR 1288). Amrhein objected to the transfer to County Court at Law No. 6 because she claimed that this court only had jurisdiction in cases involving disputed amounts of up to $100,000, and her disputed amount was $200,000. (2 CR 1430-1444). Amrhein also stated that she was unable to attend the hearing on the motion to declare her a vexatious litigant due to health issues. (2 CR 1433). On February 16, 2018, Judge Murphy stayed the matter for two weeks in light of Amrhein's objections and Amrhein's claimed medical issues. (2 CR 1445).

On March 2, 2018, Judge Murphy signed an order lifting the stay and terminating the assignment to her. (2 CR 1445). Judge Murphy explained that Amrhein's objection to County Court at Law No. 6 was unfounded because it had concurrent jurisdiction with County Court at Law No. 5. (2 CR 1445). Judge Murphy recognized that Amrhein sought an indefinite stay of the case due to

medical issues and deferred to Judge Bender to address Amrhein's request for indefinite stay. (2 CR 1445).

There can be no dispute that Judge Murphy followed Rule 18a when she transferred the case to County Court at Law No. 6. Thus, this Court should reject Amrhein's contention that Judge Murphy assigned this case to a disqualified judge.[9]

Likewise, this Court should reject any argument Amrhein may be attempting to make concerning the ruling of Judge Ray Wheless, the Presiding Judge over Amrhein's tertiary motion to recuse Judge Bender. Just three days before the previously scheduled April 5, 2018 hearing on Bollinger's vexatious litigant motion, Amrhein filed her third motion to recuse. (2 CR 1839-1849). In her third motion to recuse, Amrhein continued to erroneously argue that Judge Bender only had jurisdiction in cases claiming relief up to $100,000. (2 CR 1839-1849). Amrhein's other reasons for recusal were based on her displeasure with the rulings in her case. *Id.* Both reasons fail to support a recusal and the Presiding Judge correctly denied the motion to recuse. (2 CR 1933).

First, Judge Bender had jurisdiction because "[a] statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and

[9] Amrhein does not appear to be contesting, and could not contest, any of the orders granting the motion to recuse. *See* TEX. R. CIV. P. 18a(j)(B) ("An order granting a motion to recuse is final and cannot be reviewed by appeal, mandamus, or otherwise.").

appellate, prescribed by law for county courts." TEX. GOV'T CODE § 25.0003(a). Additionally, County Court of Law No. 6 has jurisdiction over "civil cases in which the matter in controversy exceeds $500 but does not exceed $200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition." TEX. GOV'T CODE § 25.0003(c).

Next, Amrhein's second reason for seeking recusal was clearly based on her displeasure with the rulings in this case. Amrhein's attempt to stop the hearing on Bollinger's vexatious litigant motion and/or to stay the case was improper because it was based on Judge Bender's prior ruling of denying her motion for continuance and setting the hearing on Bollinger's vexatious litigant motion. A recusal sought based solely on a judge's rulings is an impermissible ground for recusal. TEX. R. CIV. P. 18(a)(3); *see also In re H.M.S.,* 349 S.W.3d at 253. Rather, a party's remedy for unfair rulings is to assign error regarding the adverse rulings. *In re City of Dallas,* 445 S.W.3d 456, 467 (Tex. App.—Dallas 2014, orig. proceeding).

The movant bears the burden of proving recusal is warranted, and the burden is met only through a showing of bias or impartiality to such an extent that the movant was deprived of a fair trial. *Drake,* 529 S.W.3d at 528. Bias by an adjudicator is not lightly established. *Id.* The test for recusal is "whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge's conduct, would have a reasonable doubt that the

judge is actually impartial." *Id.* Amrhein failed to meet this test for recusal in the trial court and fails to present any argument showing otherwise in her Appellant's Brief. Thus, this Court should affirm the orders on Amrhein's recusal motions.

D. The trial court's declaration of Amrhein as a vexatious litigant and dismissal of her lawsuit was proper.

Amrhein suggests the trial court erred in declaring Amrhein a vexatious litigant and dismissing her lawsuit when she failed to post the ordered security to proceed.[10] *See* App.'s Br. at 4, 15-19, 26-44. She also complains about the rulings denying her motions to stay litigation and continue the hearing on the vexatious litigant motion. *Id.* at 3, 24, 32, 50. As shown below, the trial court acted well within its discretion in denying Amrhein's stay and continuance requests, declaring Amrhein to be a vexatious litigant and dismissing the lawsuit when Amrhein failed to post the required security.

1. Standard of Review.

This Court should review the trial court's determination that Amrhein was a vexatious litigant under an abuse of discretion standard. *Harris v. Rose*, 204 S.W.3d 903, 906 (Tex. App.—Dallas 2006, no pet.); *see also Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 803 (Tex. App.—Dallas 2006, pet. denied). Likewise, this Court should review the trial court's denial of any continuances of

[10] Amrhein's argument on this issue is nothing more than bare assertions of error, without proper argument or authority, and thus, Amrhein has waived error. *See* App.'s Br. at 22-49; *see also In re N.E.B.*, 251 S.W.3d at 212.

the hearing on the vexatious litigant motion under an abuse of discretion standard. *See Dallas ISD v. Finlan,* 27 S.W.3d 220, 235 (Tex. App.—Dallas 2000, no pet.).

On an abuse of discretion challenge, this Court is not free to substitute its own judgment for the trial court's judgment. *Harris*, 204 S.W.3d at 905. This Court may only find an abuse of discretion if the trial court "'acts in an arbitrary or capricious manner without reference to any guiding rules or principles.'" *Id*. The trial court's decision must be "'so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.'" *Harris,* 204 S.W.3d at 905 (quoting *BMC Software Belg. N.V. v. Marchand,* 83 S.W.3d 789, 801 (Tex. 2002)).

Without a reporter's record, an appellate court cannot review a trial court's order for an abuse of discretion. *Willms,* 190 S.W.3d at 803. Also, when an appellant fails to bring a reporter's record, an appellate court must presume the evidence presented was sufficient to support the trial court's order. *Id.*

Applying these principles, this Court should hold that the trial court did not abuse its discretion. First, this Court must presume the evidence presented was sufficient to support the court's order because no reporter's record was filed. Second, even without a presumption, the record evidence was sufficient to support the court's order.

2. The trial court was well within its discretion to deny Amrhein's requested continuances.

First, the trial court did not abuse its discretion in denying Amrhein's requests to stay the litigation and continue the hearing on the vexatious litigant motion. From the start, Amrhein sought multiple delays of the lawsuit she filed. The crux of Amrhein's requested continuances was that her alleged health conditions prevented her from working and necessitated an indefinite stay of her lawsuit. (1 CR 386, 409-415, 417-422, 679-683; 2 CR 1431, 1289-1290). Although not unsympathetic to Amrhein's condition, the trial court reviewed the evidence and pleadings, as well as contacted her physician at her urging, and ultimately concluded that a stay of the litigation and continuance of the hearing was not warranted. (1 CR 14, 429).

Delay of the case was not warranted because the evidence showed that: (1) Amrhein's physician stated that she is able to ambulate with a cane (2 CR 1450, 1470); (2) nothing in her doctor's note stated that she cannot litigate her lawsuit (2 CR 1470); (3) Amrhein had no problem filing voluminous pleadings with the trial court (and even now on appeal) and in her other pending lawsuits in other courts (1 CR 14, 2 CR 1452-1455, 1458-1466); (4) each of Amrhein's pleadings were notarized indicating she had no trouble traveling to and accessing various notaries in Collin County (2 CR 1450-1452); (5) each of Amrhein's pleadings were mailed to Bollinger indicating she had no trouble traveling to and

accessing the U.S. Post Office (2 CR 1479, 1481); (6) Amrhein has other lawsuits pending in other courts and her request for a stay in at least one of them was also denied (2 CR 1452-1453); and (7) Amrhein did not show sufficient cause for an indefinite stay of her lawsuit. (1 CR 14).

On appeal, Amrhein offers no cogent argument that the trial court abused its discretion in denying her requested stay and continuance. She makes a few vague references to a medical stay and the ADA without explaining how the trial court abused its discretion in denying her requests. *See* App.'s Br. at 2, 3, 5, 14, 20, 24, 32, 50. For instance, Amrhein's Issues 5 and 16 appear to reference her requests for stays and continuances, and denial of same, but are deficient to notify this Court and Bollinger of her complaint. *Id*. at 3, 5. There is no coherent explanation of any challenge.

Amrhein's Argument section of her Appellant's Brief is no better. *Id.* at 24, 32, 50. In her conclusion, she vaguely states that she seeks a reversal of all orders; yet, she does not describe any challenge with any specificity. *Id*. She cites to no supporting evidence and presents no comprehensible argument as to how the trial court abused its discretion in denying her requested continuances and stay of the litigation.

Simply, Amrhein did not show in the trial court, and has not shown now in this Court, any abuse of discretion in denying the request to continue the hearing on the vexatious litigant motion or stay the litigation.

3. The Vexatious Litigant Statute.

Chapter 11 of the Texas Civil Practice & Remedies Code addresses the problem of "vexatious litigants"—persons who abuse the legal system by filing numerous, frivolous lawsuits. *See* TEX. CIV. PRAC. & REM. CODE §§ 11.001-.104; *see Cooper v. McNulty*, No. 05-15-00801-CV, 2016 WL 6093999 at *2 (Tex. App.—Dallas, Oct. 19, 2016, no pet.).

Section 11.051 of the statute provides that a defendant may "on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish security." TEX. CIV. PRAC. & REM. CODE § 11.051. Upon the filing of a Section 11.051 motion, the court must conduct an evidentiary hearing to determine whether the defendant has demonstrated as a threshold matter that "there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant" ***plus*** any one of the following three criteria:

> (1) [that] the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion . . . has commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; ***or***

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; ***or***

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; ***or***

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition,[11] or occurrence.

TEX. CIV. PRAC. & REM. CODE § 11.054 (emphasis added); *see Akinwamide v. Transp. Ins. Co.,* 499 S.W.3d 511, 531 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *Jones v. Markel*, No. 14-14-00216-CV, 2015 WL 3878261 at *4-8 (Tex. App.—Houston [14th Dist.] June 23, 2015, pet. denied).

As explained below, the trial court correctly determined that that Amrhein should be declared a "vexatious litigant" because: (1) there was "not a reasonable

[11] It appears that the word "transition" in the statute is a typographical error and should be "transaction." *See Scott v. Mireles,* 294 S.W.3d 306, 308 (Tex. App.—Corpus Christi 2009, no pet.) (quoting statute as "transaction"). Bollinger has not located any Texas cases in which the word "transition" was determinative, and it is not at issue in the present case.

probability" that Amrhein would prevail (TEX. CIV. PRAC. & REM. CODE § 11.054), and (2) in the past seven years, Amrhein commenced or maintained more than five litigations as a *pro se* litigant that have been "determined adversely" to her (§ 11.054(1)(A)). Additionally, after litigation has been finally determined against her, Amrhein repeatedly litigates the validity of the determination against her, and other courts have determined her pleadings to be frivolous, have sanctioned her, and imposed pre-filing injunctions against her as a result.

4. There was not a reasonable probability that Amrhein would prevail in the litigation against Bollinger.

The threshold showing required to support a vexatious litigant declaration is that "there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant." TEX. CIV. PRAC. & REM. CODE § 11.054. Courts have made this determination with respect to claims for professional negligence. *Douglas v. Redmond*, No. 14-12-00259-CV, 2012 WL 5921200, at *8 (Tex. App.—Houston [14th Dist.] Nov. 27, 2012, pet. denied).

Likewise, Amrhein alleged a claim against Bollinger for legal malpractice related to Bollinger's representation of her in her lawsuit against Schroeder. (1 CR 70-133). Just as the plaintiff in *Douglas v. Redmond* could not establish all of the elements of a legal malpractice claim, Amrhein had no reasonable probability of

prevailing in her legal malpractice claim because she could not – and cannot now – establish all the elements of a claim for legal malpractice.[12]

a. Elements of Legal Malpractice Claim.

To prevail on a legal malpractice claim, a plaintiff must show "that (1) the attorney owed the plaintiff a duty, (2) the attorney breached that duty, (3) the breach proximately caused the plaintiff's injuries, and (4) damages occurred." *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 496 (Tex. 1995).

When a legal-malpractice case arises from prior litigation, the plaintiff must prove that she would have obtained a more favorable result in the underlying litigation had the attorney conformed to the proper standard of care. *Elizondo v. Krist*, 415 S.W.3d 259, 263 (Tex. 2013). "The traditional means of resolving what should have happened is to recreate the underlying case." *Rogers v. Zanetti*, 518 S.W.3d 394, 401 (Tex. 2017). This re-creation is typically referred to as the "case-within-a-case" and "is the accepted and traditional means of resolving the issues involved in the underlying proceeding in a legal malpractice action." *Id.*

Here, the crux of Amrhein's legal malpractice claim against Bollinger was that Bollinger allegedly filed suit in the wrong court and that fact, combined with

[12] At the time of Bollinger's vexatious litigant motion, the trial court had already dismissed all of Amrhein's claims except for her legal malpractice claim by granting Bollinger's Rule 91a motion to dismiss. (1 CR 676). *See infra* section E of this Appellee's Brief. Thus, the vexatious litigant motion addressed the only remaining claim, which was the legal malpractice claim. (1 CR 750-761).

Bollinger's alleged refusal to bring new claims in accordance with her instructions and/or Bollinger's withdrawal, ultimately caused Amrhein's lawsuit against Schroeder to be dismissed. But Amrhein had no probability of prevailing in her legal malpractice claim because she did not – and could not – establish that Bollinger's alleged conduct was a breach of the standard of care or that Bollinger's alleged conduct was the proximate cause of the damages alleged.

b. Bollinger did not breach the standard of care because Amrhein judicially admitted her case was filed in the correct court.

Amrhein's legal malpractice claim was based on some purported failure to sue Schroeder in the correct court. But such claim fails because Amrhein judicially admitted her case was filed in the correct court.

In February 2016, Amrhein sent a demand letter to Schroeder for back rent and property he allegedly took for a total amount of $2,813 plus costs. (1 CR 965-967). The demand letter states she will be filing suit in justice of the peace small claims court if he fails to meet her demand. (1 CR 965-967). Upon being retained, Bollinger prepared an original petition for filing in justice court against Schroeder based on information from Amrhein about the nature and scope of her damages. (1 CR 777-778, 784, 786-790). Bollinger sent the petition to Amrhein for review, and she approved it for filing. (1 CR 777-778, 784). Because Amrhein's alleged damages were less than $10,000, jurisdiction as to the allegations in the original

petition was proper in the Justice Court. *See* TEX. GOV'T CODE §27.031(a)(1); *see also* TEX. R. CIV. P. 500.3(a) ("A small claims case … can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any."). Accordingly, Bollinger did not file Amrhein's lawsuit against Schroeder in the wrong court.

On May 12, 2017, Bollinger withdrew as Amrhein's legal counsel in *Amrhein v. Schroeder* because Amrhein insisted upon pursuing an objective that Bollinger considered imprudent and with which Bollinger had a fundamental disagreement. *See* TEX. DISC. R. PROF'L CONDUCT, Rule 1.15(b)(4). (1 CR 899). Specifically, Bollinger withdrew because Amrhein insisted on amending her petition to bring claims against Schroeder that Bollinger considered without merit. (1 CR 777-778, 830, 844-846).

After Bollinger withdrew from the case, Amrhein, *pro se*, amended her petition on May 15, 2017. (1 CR 901-927). She swore in the amended petition that her damages did not exceed $10,000, confirming that the case was correctly filed in Justice Court. (1 CR 908). Then, on June 29, 2017, Amrhein, *pro se*, filed a supplement to her amended petition swearing that her damages were $9,775.00. (1 CR 929-951). These sworn pleadings are judicial admissions by Amrhein that directly contradict her allegations in her malpractice case that Bollinger filed her lawsuit in the wrong court.

A judicial admission is a formal waiver of proof, usually found in pleadings or the stipulations of the parties, that dispenses with the production of evidence on an issue and bars the admitting party from disputing it. *Mendoza v. Fidelity & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980); *De La Pena v. Elzinga*, 980 S.W.2d 920, 922 (Tex. App.—Corpus Christi 1998, no pet.). This rule is based on the public policy that it would be unjust to permit a party to recover after he has sworn himself out of court by clear, unequivocal testimony. *De La Pena*, 980 S.W.2d at 922.

A judicial admission "results when a party makes a statement of fact which conclusively disproves a right of recovery or defense currently asserted." *See Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 900 (Tex. App.—Houston [14th Dist.] 2004, no pet.). A pleading in another lawsuit may be considered a judicial admission. *Id.* To be treated as a judicial admission, a party's statement must meet five requirements: (1) the statement relied on is made during the course of a judicial proceeding; (2) the statement is contrary to an essential fact embraced in the theory of recovery or defense asserted by the person making the statement; (3) the statement is deliberate, clear, and unequivocal; (4) giving conclusive effect to the statement will be consistent with the policy on which the judicial admission rule is based; and (5) the statement is not also destructive of the opposing party's

theory of recovery. *See DowElanco v. Benitez*, 4 S.W.3d 866, 871 (Tex. App.—Corpus Christi 1999, no pet.).

Amrhein's amended and supplemental petitions both contain statements during the course of a judicial proceeding that directly conflict with allegations she made against Bollinger in her legal malpractice claim. Amrhein swore on two separate occasions that her damages were less than $10,000, meaning that jurisdiction in the Justice Court was correct. (1 CR 908, 942-943). Yet, in her malpractice claim against Bollinger, she contends Bollinger committed malpractice by filing suit in the wrong court. (1 CR 87-88, 97, 103; 2 CR 1202-1209). Amrhein's statements in her amended and supplemental pleadings as to the amount of damages are deliberate and clear. Application of the judicial admissions doctrine to the case at hand was consistent with public policy, and it was not destructive of Bollinger's assertions in this case.

Because Amrhein judicially admitted her claims were within the jurisdictional limits of the Justice Court, she was precluded from claiming that Bollinger filed the case in the wrong court. Thus, there was no reasonable probability that Amrhein would prevail because the damages pleaded in the original petition, prepared by Bollinger, fell within the jurisdictional limit of the court and Amrhein also judicially admitted same.

c. Amrhein's amended filings were new and independent causes of the dismissal of the case.

Amrhein's claim that Bollinger caused the dismissal of the Schroeder lawsuit has no merit. The dismissal was not caused by Bollinger but rather by Amrhein's intervening and superseding act of filing an amended pleading, *pro se*, that plead no damages and then a further subsequent pleading she filed *pro se* that plead damages outside the jurisdiction of the court.

Amrhein filed her amended petition *pro se* on May 16, 2017. (1 CR 901-927). Amrhein's first amended petition alleged twenty-one causes of action against Schroeder, and made claims for consequential damages, "mental pain and suffering," and punitive damages. (1 CR 907-916).

On June 29, 2017, Amrhein filed "Plaintiffs' Supplement to First Amended Pleadings." (1 CR 929-951). In this pleading, Amrhein supplemented her First Amended Petition and purported to add numerous additional causes of action against Schroeder. (1 CR 930).

The amended and supplemental petitions were the operative pleadings when the judge dismissed Amrhein's case (five months after Bollinger's withdrawal) for "fail[ing] to plea for damages." (1 CR 953). Importantly, the trial court dismissed Amrhein's claims because she failed to plead damages at all. (1 CR 953). Bollinger did not represent Amrhein when Amrhein amended her petition, *pro se*, and omitted a proper pleading of damages. Conversely, the original petition Bollinger

filed on behalf of Amrhein properly pleaded damages in the amount of $2,300. (1 CR 788).

After her case was dismissed, on October 16, 2017, Amrhein sought leave from the court to "file a lawsuit against David A Schroeder," which the trial court construed as a "request to replead her cause of action." (1 CR 955). But because Amrhein's new pleadings asked for an award of $13,208, the trial court denied Amrhein's request as the alleged damages were in excess of the jurisdictional limits of the court. (1 CR 955). Importantly, the court noted that it was not appropriate to reduce the damages to fit in the court's jurisdictional limits. (1 CR 955). The court denied Amrhein's request to *re*plead her cause of action because of want of jurisdiction. Bollinger did not represent Amrhein when Amrhein requested that the court allow her to *re*plead her claims and included an amount outside the jurisdictional limits of the court.

Amrhein appealed the decision of the Justice Court on October 27, 2017 to County Court at Law No. 2. Schroeder filed a plea to the jurisdiction on December 7, 2017. On December 14, 2017, the County Court of Law No. 2 dismissed Amrhein's appeal for want of jurisdiction. (1 CR 957).

Amrhein filed a "Motion for Reconsideration" of the December 14, 2017 Order. (1 CR 959-963). Interestingly, Amrhein did not seek reconsideration of the dismissal of her case, but only reconsideration of the decision that costs were

assessed to Amrhein. (1 CR 960). Amrhein admitted that "Dismissal is fine," but "Plaintiff believes that no costs to Plaintiff should be Ordered[.]" (1 CR 960). Thus, Amrhein admitted that dismissal was appropriate under the circumstances of her appeal.

When the plaintiff's allegation is that some failure on the attorney's part caused an adverse result in prior litigation, the plaintiff must produce evidence from which a jury may reasonably infer that the attorney's conduct proximately caused the damages alleged. *Haynes & Boone v. Bowser Bouldin, Ltd.*, 896 S.W.2d 179, 181 (Tex. 1995); *Alexander v. Turtur & Assocs.*, 146 S.W.3d 113, 117 (Tex. 2004).

Proximate cause means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. To be a proximate cause, the act or omission complained of must be such that a lawyer using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. *See Nixon v. Property Mgmt. Corp.*, 690 S.W.2d 546 (Tex. 1998). Thus, proximate cause is comprised of two distinct elements: 1) cause-in-fact and 2) foreseeability. *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Research Corp.*, 299 S.W.3d 106, 122 (Tex. 2009).

These elements cannot be established by mere conjecture, guess, or speculation. *McClure v. Allied Stores of Tex., Inc.*, 608 S.W.2d 901, 903 (Tex. 1980).

Cause-in-fact is not shown if the defendant's negligence did no more than furnish a condition which made the injury possible. *See Bell v. Campbell*, 434 S.W.2d 117, 120 (Tex. 1968). Even if the injury would not have happened but for the defendant's conduct, the connection between the defendant and the plaintiff's injuries simply may be too attenuated to constitute legal cause. *See Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 776 (Tex. 1995); *Doe v. Boys Clubs of Greater Dallas, Inc*., 907 S.W.2d 472, 477 (Tex. 1995).

Although there can be more than one proximate cause of an injury, *see Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex. 1992), a new and independent, or superseding, cause may "intervene[] between the original wrong and the final injury such that the injury is attributed to the new cause rather than the first and more remote cause." *Dew v. Crown Derrick Erectors, Inc.*, 208 S.W.3d 448, 450 (Tex. 2006) (plurality op.). A defendant's conduct is not a proximate cause of the plaintiff's injuries if subsequent conduct of a third-party interrupts or supersedes the defendant's actions. *Id.* A superseding cause is one that alters the natural sequence of events, produces results that would not otherwise have occurred, is an act or omission not brought into operation by the original wrongful act of the

defendant, and operates entirely independently of the defendant's allegedly tortious act. *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 857 (Tex. 2009). A new and independent cause thus destroys any causal connection between the defendant's negligence and the plaintiff's harm, precluding the plaintiff from establishing the defendant's negligence as a proximate cause. *Id.* at 856. This is true even if the original tortious act is the "but for" cause of the intervening cause. *MJS & Assocs., LLC v. Master*, 501 S.W.3d 751, 757-758 (Tex. App.—Tyler 2016, pet. denied).

Amrhein argued that the Bollinger's alleged conduct caused dismissal of her case against Schroeder. But even assuming, *arguendo*, Bollinger engaged in the conduct as alleged, which was specifically denied, Amrhein's subsequent conduct of filing amended and supplemental pleadings interrupted and/or superseded any of Bollinger's alleged actions. For example, Amrhein's allegations that Bollinger failed to conduct discovery, failed to schedule mediation, failed to amend pleadings, recommended an improper settlement amount, communicated improperly with Schroeder, and/or failed to communicate between December 2016 and May 2017 (acts and omissions specifically denied and disproven by Bollinger) (1 CR 759, 779, 799-846, 953), were not the proximate cause of alleged damages because it was Amrhein's *pro se* filings after withdrawal that caused dismissal of the lawsuit and not any of the kaleidoscope of allegations Amrhein asserts in her

petition against Bollinger. The amended and supplemental pleadings were intervening and/or superseding causes that destroyed any causal connection between Bollinger's allegedly tortious acts and the harm alleged by Amrhein.

Bollinger cannot be held liable for Amrhein's actions that later plead her out of court. Accordingly, there was not a reasonable probability that Amrhein would prevail on her legal malpractice claims against Bollinger because Amrhein's intervening and/or superseding actions preclude her from establishing Bollinger's negligence as a proximate cause.

d. The withdrawal did not proximately cause Amrhein's alleged damages.

Additionally, to the extent Amrhein contended that she was damaged because Bollinger withdrew from the representation (1 CR 97, 99), Bollinger showed that any connection between Bollinger's withdrawal and dismissal of the case was too attenuated to be a cause of the dismissal. (1 CR 760-761); *see also Union Pump Co.*, 898 S.W.2d at 776; *Boys Clubs of Greater Dallas, Inc*., 907 S.W.2d at 477.

Further, the act of withdrawal was not improper. Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct permits withdrawal when the client insists upon pursuing an objective that the attorney considers imprudent and with which the attorney has a fundamental disagreement. *See* TEX. DISC. R. PROF'L CONDUCT, Rule 1.15(b)(4). Here, Bollinger could not agree to bring claims that

lacked merit and advised Amrhein that he would be filing a motion to withdraw due to their disagreement on how to proceed and the differing views on the claims that could be asserted. (1 CR 778, 844-845). Rule 10 of the Texas Rules of Civil Procedure permits an attorney to withdraw from representing a party by written motion that shows good cause. TEX. R. CIV. P. 10. In accordance with these Rules, Bollinger had proper grounds to withdraw, filed a motion citing good cause, and obtained court approval of the withdrawal. (1 CR 899). Accordingly, there was not a reasonable probability that Amrhein would prevail on her legal malpractice claim against Bollinger with respect to the withdrawal.

5. Amrhein lost *more* than five *pro se* litigations that she commenced/maintained in the seven years prior to the filing of the motion.

Not only was there no reasonable probability that Amrhein would prevail in her litigation against Bollinger, but the evidence conclusively established that, in the seven-year period immediately prior to the filing of the vexatious litigant motion, Amrhein "commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been . . . finally determined adversely to the plaintiff." TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A).

The record evidence sets forth Amrhein's *pro se* lawsuits she commenced, prosecuted, or maintained in the seven years prior to Bollinger's vexatious litigant

motion that were finally determined against her. The record also contains evidence showing the cases that Amrhein repeatedly litigated after they were finally determined and regarding courts that have found Amrhein's litigations frivolous and sanctionable. Additionally, Bollinger pointed out to the trial court the many other countless *pro se* lawsuits Amrhein prosecuted beyond the lawsuits described in Bollinger's motion and second supplemental motion.[13]

More specifically, the record on appeal shows that Amrhein was involved as a *pro se* litigant in each of the following matters in the seven years immediately preceding the date of Bollinger's motion:

a. *Balistreri-Amrhein v. AHI*, No. 05-09-01377-CV, Dallas Court of Appeals

This case arose out of a dispute regarding the purchase of a house. In the trial court, Amrhein's claims against AHI and Inspector Aaron Miller (two of the approximately 15 defendants) were severed and dismissed in August of 2009. (2 CR 1542-1547). Amrhein appealed *pro se* the court's August 14, 2009 Order dismissing these defendants on November 10, 2009 (later known as "the AHI appeal"). (2 CR 1549-1552).

[13] Bollinger requested that the trial court take judicial notice of Amrhein's suits filed in Collin County, Texas: Cause Nos. 199-01407-91; 219-5259-93; 366-01063-94; 003-10097; 296-00634-98; 003-848-01; 005-1096-02; 366-00784-04; 296-04034-06; 380-04081-06; 199-05352-2016; 01-EV-13-00835; and 002-02663-2017. This list did not include her lawsuits filed in other state and federal jurisdictions or her pending litigations. A trial court is free to take judicial notice of cases in vexatious litigant motions. *See Scott v. Mireles*, 294 S.W.3d 306, 308 (Tex. App.—Corpus Christi 2009, no pet.); *Douglas v. Redmond*, No. 14-12-00259-CV, 2012 WL 5921200, at *8 (Tex. App.—Houston [14th Dist.] Nov. 27, 2012, pet. denied).

In the AHI appeal, as a *pro se* appellant, Amrhein "continually supplemented" her pleadings. *Balistreri-Amrhein v. AHI*, No. 05-09-01377-CV, 2012 Tex. App. LEXIS 6258, at *1 (Tex. App.—Dallas July 31, 2012). The Dallas Court of Appeals dismissed the appeal on July 31, 2012, because Amrhein did not identify any issues for review in the briefing. (1 CR 976-979). On August 29, 2012, the appellate court denied rehearing, and on December 14, 2012, the Texas Supreme Court denied Amrhein's petition for review. (1 CR 975-979). Accordingly, this appeal was adversely decided against Amrhein. Since this appeal was maintained until December 14, 2012, it fell within the last seven years before Bollinger filed his vexatious litigant motion.

Bringing a *pro se* appeal counts as "maintaining a litigation pro se" for purposes of Section 11.054(1). *Jones*, 2015 WL 3878261, at *6; *see also Retzlaff v. GoAmerica Comm'ns Corp.*, 356 S.W.3d 689, 699 (Tex. App.—El Paso 2011, no pet.).

b. *Balistreri-Amrhein v. Remax, Riechert, et al.*, No. 05-10-01347-CV, Dallas Court of Appeals

In addition to the AHI appeal explained above, Amrhein maintained another separate and distinct *pro se* appeal at the Dallas Court of Appeals stemming from the same trial court case.

After severing off the two AHI defendants, the case continued in the trial court. (2 CR 1582-1588). When the remainder of Amrhein's claims against the

remaining defendants were dismissed, Amrhein, in a separate Notice of Appeal, appealed *pro se* the court's September 22, 2010 Order striking her pleadings and dismissing her case. (2 CR 1590-1591).

The trial court denied Amrhein's motion for new trial on October 4, 2010. (2 CR 1593). Amrhein thereafter filed her notice of appeal on October 20, 2010 ("the Remax appeal"). (2 CR 1595-1597). The Remax appeal was given a separate and distinct cause number. (2 CR 1599-1601).

The two separate appeals (concerning different claims and different defendants)[14] were both maintained separately by Amrhein *pro se*, but were consolidated by the Court in the interest of judicial economy on or about July 7, 2011. (2 CR 1603-1605). Both appeals were then were dismissed adversely against Amrhein by Memorandum Opinion on July 31, 2012. (1 CR 976-977). Mandate issued on June 19, 2013, after the Supreme Court dismissed her petition for review on December 14, 2012. (2 CR 979). Both appeals were maintained during the seven years before Bollinger's vexatious litigant motion was filed, and each of these appeals was eventually adversely decided against her in the consolidated AHI appeal.

Again, both of these appeals were maintained during the relevant time period and qualify under § 11.054(1)(A) because bringing a *pro se* appeal counts

[14] The AHI appeal, *supra*, and the Remax appeal.

as "maintaining a litigation pro se" for purposes of Section 11.054(1). *Jones*, 2015 WL 3878261, at *6; *see also Retzlaff*, 356 S.W.3d at 699.

Even though the two separate appeals arose out of the same lawsuit, and were consolidated for judicial economy, they still count as two separate matters maintained by Amrhein *pro se*. The vexatious litigant statute does not state that matters involving the same case should be considered one litigation. *In re Estate of Aguilar*, No. 04-16-00503-CV, 2018 WL 1176491, at *7 (Tex. App.—San Antonio Mar. 7, 2018, no pet.) (citing TEX. CIV. PRAC. & REM. CODE § 11.001(2); *Restrepo v. All. Riggers & Constructors, Ltd.*, 538 S.W.3d 724, 751 (Tex. App.—El Paso 2017, no pet.) (considering three interlocutory appeals involving the same case as three separate litigations and three original proceedings involving the same case as three separate litigations)). In fact, the court in *In re Aguilar* held that eight matters, such as civil actions, appeals, and original proceedings—several of which were concerning the same probate proceeding—were all considered *separately* for determination under the vexatious litigant statute. *Aguilar*, 2018 WL 1176491, at *7 (citing *Retzlaff*, 356 S.W.3d at 700). Thus, both the AHI and Remax appeals were maintained separately by Amrhein, and both were adversely decided against her in the seven years before Bollinger's vexatious litigant motion was filed, and qualify under § 11.054(1)(A).

c. Appeal of denial of request to proceed on appeals without advance payment of costs, Dallas Court of Appeals

In conjunction with her *Remax* notice of appeal, Amrhein separately requested leave from the trial court to proceed with indigent status at the Dallas Court of Appeals, which the trial court denied. Thereafter, on November 2, 2010, Amrhein filed a separate notice of appeal of the trial court's denial of her request to proceed on appeal without prepayment of costs. (2 CR 1607-1613). On or about July 6, 2011, less than seven years before the filing of Bollinger's vexatious litigant motion, the Dallas Court of Appeals issued a Memorandum Opinion affirming the trial court's denial of her request to proceed as an indigent. *See Balistreri-Amrhein v. AHI*, Nos. 05-09-01377-CV, 05-10-01347-CV, 2011 Tex. App. LEXIS 5068, at *1 (Tex. App.—Dallas July 6, 2011). (1 CR 969-974). In this Opinion, this Court reviewed the lower court's decision to sustain a contest to an affidavit of indigence. It held that the trial court did not abuse its discretion and affirmed the lower court's decision. *Id.* at *8. This court of appeals' decision is a separate, adverse determination for the purposes of the vexatious litigant statute.

Just as "a denial of a mandamus petition aimed at a trial judge's refusal to rule on motions counted as a separate adverse determination for purposes of section 11.054(1)," so should this appeal of the denial of a motion to proceed without prepayment of costs on appeal be counted as a separate adverse determination under the statute. *See Retzlaff*, 356 S.W.3d at 700. A denial of

Amrhein's motion to proceed without prepayment of costs on appeal is, just as a mandamus action is, a "separate, original proceeding that did not challenge the trial court's final decision in the underlying case or relate to the merits of the underlying case." *See, Jones*, 2015 WL 3878261, at *6. Thus, the court's decision to deny her the right to proceed on appeal without prepayment of costs is a litigation maintained and adversely decided against Amrhein in the seven-year period before Bollinger's vexatious litigant motion was filed. *See* TEX. CIV. PRAC. & REM. CODE § 11.054(1).

d. *Amrhein v. Riechert, et al.,* U.S. District Court for the Northern District of Texas

On September 12, 2012, Amrhein filed a complaint in federal court, *pro se*, naming 57 defendants, including various elected officials, judges, attorneys, cities, courts, and the State of Texas, and many of which she had sued earlier in the state court proceeding that resulted in the AHI and Remax appeals. The magistrate judge entered findings, conclusions and recommendations on February 1, 2013. (2 CR 1012-1022). In addition to recommending dismissal of Amrhein's complaint, the magistrate noted that, "Plaintiffs have made it clear that they will not cease their contumacious conduct absent some sort of sanction," and noted that "[Amrhein] has filed at least 22 civil actions in various Collin County courts, two in Dallas County court, and four in Texas federal courts, as well as numerous state appeals and bankruptcy cases." (2 CR 1022). The magistrate recommended a pre-filing

injunction against Amrhein to be applied in all district courts in the United States. (2 CR 1022). The district court entered an order accepting the findings, conclusions and recommendations of the magistrate on March 21, 2013. (2 CR 1024-1025).

In its Order accepting the magistrate's recommendations, **the U.S. District Court entered the pre-filing injunction against Amrhein and held that** "**Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so ..." *Amrhein, et al. v. Jerry Riechert, et al.*, No. 3:12-CV-03707 (March 21, 2013) (emphasis added)). (2 CR 1025). The court also entered a final judgment that same day dismissing Amrhein's claims. (2 CR 1027-1029).

The Fifth Circuit dismissed Amrhein's *pro se* appeal on October 27, 2014 and issued the mandate the same day. (2 CR 1031-1034). The United States Supreme Court denied certiorari on February 23, 2015. *See Amrhein v. Reichert*, 135 S. Ct. 1479 (2015). This matter was finally adversely decided against Amrhein within the last seven years before Bollinger filed his vexatious litigant motion.

e. *Amrhein v. La Madeleine, et al.*, U.S. District Court of the Northern District of Texas

Unhappy with the outcome of state court litigation against her former employer, La Madeline, that lasted over 14 years, Amrhein turned to the federal

system on August 16, 2011, and filed another employment lawsuit against La Madeleine, in the Eastern District of Texas. (1 CR 981-984). The case was soon transferred to the Northern District of Texas. Amrhein, *pro se*, sued 27 defendants, including the State of Texas, various Texas elected officials, judges, and courts. This suit was adversely decided against Amrhein on December 21, 2012. (1 CR 981-984).

The district court dismissed her claims with prejudice and **warned that any attempt to re-file may result in sanctions or other disciplinary measures**. (1 CR 984). The district court entered a final judgment on December 31, 2012. (1 CR 986). At the time of dismissal, Amrhein had "been in and out of court for over 16 years attempting to find a favorable resolution for her plight." *Amrhein v. La Madeleine, Inc., et al.*, 2012 Tex. Cnty. LEXIS 5509 *10 (N.D. Tex. Dec. 21, 2012). (1 CR 984).

Amrhein appealed to the Fifth Circuit, *pro se*, and the Fifth Circuit affirmed the trial court's dismissal, noting that her complaint totaled over 200 pages and included over 52 issues. *Amrhein v. La Madeleine, Inc.*, 589 F. App'x 258, 259 (5th Cir. 2015). (1 CR 988-990).

Amrhein's petition for writ of certiorari to the United States Supreme Court was denied on October 5, 2015. *Amrhein v. La Madeleine, Inc.*, 136 S. Ct. 86 (2015). (1 CR 992). Amrhein's petition for rehearing to the U.S. Supreme Court

was denied on November 30, 2015. *Amrhein v. La Madeleine, Inc.*, 136 S. Ct. 574 (2015). (1 CR 994).

This matter was finally adversely decided against Amrhein within the last seven years before the filing date of Bollinger's vexatious litigant motion.

f. *Amrhein v. La Madeleine, Inc.*, Court of Appeals of Texas, Sixth District, Texarkana

This litigation was another of the La Madeline series that Amrhein filed *pro se* alleging that La Madeleine failed to provide a safe workplace. *Amrhein v. La Madeleine, Inc.*, No. 06-12-00107-CV, 2013 Tex. App. LEXIS 2191, at *1 (Tex. App.—Texarkana Mar. 6, 2013). (1 CR 996-1000). Amrhein appealed *pro se* from the grant of La Madeleine's summary judgment and order of dismissal.

The Texarkana Court of Appeals affirmed the trial court's judgment against Amrhein on March 6, 2013. (1 CR 996-1000). The court of appeals further denied two motions for rehearing and a motion for reconsideration. (2 CR 1002, 1004, 1006). On February 7, 2014, the Texas Supreme Court denied her petition for review and on April 4, 2014, the court denied the petition on rehearing. (1 CR 1008, 1010).

This matter was finally adversely decided against Amrhein within the last seven years before Bollinger filed his vexatious litigant motion.

g. *Amrhein v. David Schroeder,* Appeal to County Court of Law No. 2, Collin County, Texas

After Bollinger withdrew from representing Amrhein in the Schroeder lawsuit, Amrhein continued to prosecute her lawsuit against Schroeder *pro se* until the Justice Court dismissed it on October 16, 2017. (1 CR 953). In the Order of Dismissal, Judge Raleeh sanctioned Amrhein and ordered that "Plaintiff not file another civil cause of action against Defendant until first authorized by this Court." (1 CR 953).

On October 27, 2017, Amrhein appealed the dismissal to County Court of Law No. 2. (1 CR 165, 959; 2 CR 1316, 1531). In appealing her small claims court case to County Court of Law No. 2, this litigation qualifies under § 11.054(1)(A) because it was a separate *pro se* appeal, was no longer in small claims or Justice Court, and was finally adversely decided against her within the seven years prior to Bollinger's vexatious litigant motion. Amrhein's appeal of *Amrhein v. Schroeder* was dismissed on December 14, 2017.[15] (1 CR 957; 2 CR 1531).

In summary, during the seven-year period preceding the filing of the vexatious litigant motion, Amrhein prosecuted or maintained at least five *pro se*

[15] On December 15, 2017, Amrhein filed a document "requesting that the taxed costs to Plaintiff be removed from December 14, 2017 Order in the interest of justice…" and/or asking that the "taxed cost should be given to those in forma pauperis funds or waived." (1 CR 959-963). This request is not a motion for new trial nor questioned the dismissal of her case. Therefore, to the extent that it was a motion to modify, correct, or reform a judgment it was overruled by operation of law on February 28, 2018. TEX. R. CIV. P. 329b(g).

matters, and she has received adverse rulings each time. Amrhein's extensive *pro se* litigation record demonstrates that the trial court properly declared Amrhein a vexatious litigant. TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A).

6. Amrhein repeatedly litigates the same claims against the same defendants.

As can be seen in the recitation of Amrhein's *La Madeline* and *Riechert* cases and appeals contained herein, Amrhein repeatedly litigates the same issues and causes of action against the same defendants after a suit has been decided against her. (1 CR 981 – 2 CR 1010, 1068-1096). This was a second and independent basis establishing Amrhein as a vexatious litigation under the statute. TEX. CIV. PRAC. & REM. CODE § 11.054(2).

Three of the above matters involve variations on the *Riechert* litigation arising from the purchase of a house. Two of the above matters involve variations of litigation against La Madeline. Amrhein's long-lasting and harassing *La Madeleine* litigation is a prime example of what the Texas Legislature was trying to prevent when it enacted Chapter 11 of the Texas Civil Practice and Remedies Code. (1 CR 981-994, 996-999; 2 CR 1000-1010, 1068-1096). As noted by the magistrate in the Northern District, Amrhein litigated against La Madeline in state court for over 14 years before then filing suit in the Eastern District of Texas. (2 CR 1022). "By the time she got to federal court, she had dragged numerous unrelated parties into the suit including…the State of Texas, Governor Perry, the

Texas Secretary of State, various judges, and the entire Texas state legislature." (2 CR 1022). Amrhein brought 52 causes of action against the named parties and her filings were voluminous. (2 CR 1022). It was evidence like this that caused the magistrate to conclude that Amrhein would not stop absent some sort of sanction. (2 CR 1022).

Two additional cases in federal court shed more light on the litigations that qualify her as vexatious under § 11.054(2).

a. *Balistreri-Amrhein v. Verrilli, et al.,* U.S. District Court for the Eastern District of Texas

On February 11, 2016, Amrhein filed a complaint, *pro se,* in the U.S. District Court for the Eastern District of Texas in violation of the pre-filing injunction imposed by the court in *Riechert* case. (2 CR 1036-1057). Amrhein's third amended complaint named more than 120 defendants and asserted numerous causes of action against each defendant.

On October 7, 2016, the magistrate judge recommended that Amrhein's complaint, filed *pro se,* be dismissed with prejudice. (2 CR 1057). The magistrate found that "**Plaintiffs have previously asserted the allegations contained in the Third Amended Complaint (or similar allegations) against many of the defendants named therein**." (2 CR 1038). Additionally, the magistrate noted that **Amrhein was in violation of the Northern District of Texas's Pre-filing Injunction Order and that Amrhein's claims were frivolous and malicious**. (2

CR 1044, 1056-1057). On February 24, 2017, the district court adopted the recommendation and dismissed Amrhein's complaint with prejudice. (2 CR 1059-1066). On September 5, 2018, the Fifth Circuit dismissed Amrhein's appeal as frivolous. *See Balistreri-Amrhein v. Wall, et al.,* No. 17-40880, 736 Fed. App'x 488, 489 (5th Cir. Sept. 5, 2018).

This action qualified under § 11.054(2) because Amrhein was asserting the same or similar allegations against many of the defendants she had previously sued in the Northern District *Riechert* case after the *Riechert* litigation had been finally determined against Plaintiff. Thus, these issues were being repeatedly litigated against the same defendants. (1 CR 1036, 1038).

b. *Amrhein v. United States of America, et al.,* U.S. District Court for the Eastern District of Texas (a variation of previously disposed of *La Madeline* litigation).

On March 31, 2016, Amrhein filed a lawsuit against over 160 defendants, including the United States, President Obama, many federal, state, and local elected officials, the justices of the Supreme Court, courts, judges, clerks of court, the State of Texas, La Madeline, Inc., the attorneys for La Madeline, and many more individuals. (2 CR 1068). Her complaints stemmed (again) from disputes between Amrhein and her prior employer La Madeleine, Inc.—Amrhein complained that its employees mistreated her at work, caused to her suffer on-the-job injuries, and subsequently refused to pay for certain medical procedures.

The magistrate issued a Report and Recommendation on June 23, 2017 recommending dismissal of Amrhein's claims. (2 CR 1068-1078). The magistrate again noted that **Amrhein was in violation of the Northern District of Texas's Pre-filing Injunction Order and that Amrhein's claims were frivolous and malicious**. (2 CR 1077).

In adopting the recommendations of the magistrate on September 6, 2017, the court pointed out that "[i]n the instant action, **Plaintiff now raises for the third time all of the same claims she raised in the *Amrhein NDTX I* litigation**, and has appended claims against every member of the judiciary remotely associated with the Amrhein *NDTX I* litigation, as well as their staff and any attorney representing other parties to that litigation." (2 CR 1083). The court further recounted Amrhein's extensive prior litigation history: **"she has filed more than six suits before numerous Texas state and federal courts (including [the Eastern District of Texas]), and courts have dismissed each of these cases for frivolousness and/or for failure to comply with basic pleading or procedural requirements."** (2 CR 1085). The court found that "Plaintiff has filed flurries of largely incomprehensible motions, letters, and other requests for relief both prior to and following the respective court's disposition of her claims and that courts have previously admonished Plaintiff for such behavior." (2 CR 1086). Moreover, the Court held that "Plaintiff's claims and allegations [in this 2016 lawsuit] . . .

duplicate the claims Plaintiff previously raised (and the Northern District previously dismissed with prejudice) in the *Amrhein NDTX I* litigation." (2 CR 1092). On October 3, 2017, Amrhein, *pro se*, appealed this decision and the appeal was dismissed as frivolous on October 16, 2018. *See Amrhein v. United States of America, et al.*, No. 17-41017, 740 Fed. App'x 65, 67 (5th Cir. Oct. 16, 2018).

This action also qualified Amrhein as vexatious under § 11.054(2) because Amrhein was asserting the same or similar allegations against many of the same defendants she had previously sued in the Northern District *La Madeline* case after the *La Madeline* litigation had been finally determined against Plaintiff. (2 CR 1533-1565). Thus, Amrhein is repeatedly litigating, *pro se*, the same claims against the same defendants. (1 CR 1068-1069).

With respect to both *Verrilli* and *USA*, it is important to note that Section 11.054(2) does not have the seven-year requirement or a requirement that the actions be finally adversely decided against Amrhein. *See* §§ 11.054(2)(A), 11.054(2)(B). Thus, the trial court could find, based on these two cases, that Amrhein was a vexatious litigant because she was repeatedly litigating or attempting to relitigate, *pro se*, the validity of the determination against the same defendants as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendants as to whom the litigation was

finally determined, after a litigation has been finally determined against Amrhein. *See* §§ 11.054(2)(A); 11.054(2)(B).

7. Amrhein's lawsuits have been labeled frivolous and she has been declared a vexatious litigant by other courts.

Amrhein's previous lawsuits have been declared frivolous by courts, and Amrhein has even been sanctioned for continuing to file frivolous litigation. The Northern District of Texas issued a pre-filing injunction against her. (2 CR 1025). Twice, her pleadings have been declared frivolous and malicious by the magistrate in the Eastern District of Texas. (2 CR 1056, 1077). A district judge in the U.S. District Court for the Eastern District of Texas found that Amrhein "has filed more than six suits before numerous Texas state and federal courts . . ., and courts have dismissed each of these cases for frivolousness and/or for failure to comply with basic pleading or procedural requirements." (2 CR 1085).

Accordingly, the trial court could properly declare Amrhein a vexatious litigant under Chapter 11 because she has violated the Pre-filing Injunction Order and a court has found that at least six of her previous cases were frivolous. *See* TEX. CIV. PRAC. & REM. CODE § 11.051(3).

Amrhein filed *pro se* her employment dispute against Prosperity Bank in *Amrhein v. Prosperity Bank, et al*., No. 417-05352-2016/199-05352-2016, 417th Judicial District of Collin County, Texas. There, she was declared a vexatious litigant and the case was dismissed on October 2, 2018. Amrhein has filed an

appeal, which is currently pending in *Amrhein v. Prosperity Bank et al.*, No. 05-18-01493-CV in the Dallas Court of Appeals.

With all of the above evidence before it, the trial court correctly entered its April 5, 2018 order declaring Amrhein to be a vexatious litigant and requiring her, pursuant to TEX. CIV. PRAC. & REM. CODE §§ 11.051(1); (2); (3), to post security before proceeding in her lawsuit against Bollinger. (2 CR 1934-1935).

8. Amrhein failed to post security resulting in the trial court's dismissal.

The trial court's April 5, 2018 order declaring Amrhein to be a vexatious litigant required Amrhein to post security no later than 5:00 p.m. on May 5, 2018, or "the Court will dismiss the litigation with prejudice." (2 CR 1934-1935). Amrhein failed to post the required security. (2 CR 2021). Thus, the court was required to dismiss the case. (2 CR 1934-1935); *see also* TEX. CIV. PRAC. & REM. CODE § 11.056 (requiring a court to dismiss a litigation as to the moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time limit set by the order). On May 14, 2018, the trial court correctly dismissed the case with prejudice. (2 CR 2082). Amrhein has presented no reason why this dismissal should be reversed. Thus, this Court should affirm the dismissal.

E. The trial court correctly granted the Rule 91a dismissal.

Prior to filing his vexatious litigant motion, Bollinger filed a Rule 91a motion to dismiss on Amrhein's non-legal malpractice claims, which the trial court

granted. (1 CR 140-158, 676-677). Amrhein does not appear to raise any challenge to the trial court's order granting the Rule 91a dismissal. *See* App.'s Br. in its entirety. She does not include this order in any of her issues presented to this Court, and she does not include any argument as to why this order should be reversed. *See* App.'s Br. at 3-5, 22-50. She makes two passing references to the Rule 91a motion in her statement of facts. *Id.* at 12, 13. Because Amrhein has failed to adequately brief any challenge to the trial court's order granting the Rule 91a motion to dismiss, Amrhein waived such challenge. *In re N.E.B.*, 251 S.W.3d at 212. Should this Court find that Amrhein has challenged this order, Bollinger presents the following argument supporting this Court's affirmance of the trial court's order granting the Rule 91a motion to dismiss.

1. Standard of Review.

This Court reviews an order denying a motion to continue the hearing on a Rule 91a motion to dismiss under an abuse of discretion standard. *See Finlan*, 27 S.W.3d at 235. This Court reviews *de novo* orders of dismissal under Rule 91a. *See City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016). Under these standards, this Court should affirm.

2. The trial court did not abuse its discretion in refusing to stay the case and in denying Amrhein's motion for continuance.

Amrhein sought a continuance of the Rule 91a motion to dismiss hearing and also sought an indefinite stay of her lawsuit citing to health problems. (1 CR

409-422, 2 CR 1135-1146). But no continuance was needed because Rule 91a.6 allows the trial court to hear the motion by written submission rather than conduct a hearing. (1 CR 423-425); *see also* TEX. R. CIV. P. 91a.6. Additionally, strict deadlines exist under the Texas Rules of Civil Procedure by which the Rule 91a motion must be ruled upon. (1 CR 424); *see also* TEX. R. CIV. P. 91a.3. Because Amrhein had already filed a written response to the motion, Bollinger requested that the court hear the Rule 91a motion by written submission on January 25, 2018 rather than conduct a hearing. (1 CR 424).

On January 17, 2018, the trial court denied Amrhein's requested continuance and stay and ordered the Rule 91a motion be heard by submission on January 25, 2018. (1 CR 429). Such ruling was clearly allowed under Rule 91a and within the court's discretion.

3. The trial court properly granted Bollinger's Rule 91a motion to dismiss.

Bollinger filed his Rule 91a motion to dismiss on December 22, 2017, challenging Amrhein's baseless causes of action. (1 CR 140-158). As required by Rule 91a.2, Bollinger identified and challenged all causes of action Amrhein, *pro se*, attempted to bring as representative of Anthony J. Balistreri, deceased, as well as the non-legal malpractice and improperly fractured causes of action. (1 CR 144); *see also* TEX. R. CIV. P. 91a.2.

Neither in the trial court below nor in her Appellant's Brief before this Court does Amrhein offer any argument or authority to contradict Bollinger's motion to dismiss on the non-legal malpractice claims and improperly fractured legal malpractice claims. For example, Amrhein presented no legal authority that contradicts the principle that the Texas Disciplinary Rules of Professional Conduct do not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. *See* Tex. Disciplinary Rules of Prof'l Conduct, Preamble, ¶ 15; *Scott Pelley P.C. v. Wynne*, 05-15-01560-CV, 2017 WL 3699823, at *21 (Tex. App.—Dallas Aug. 28, 2017, pet. denied), *reh'g denied* (Sept. 29, 2017). Thus, the trial court correctly dismissed Amrhein's purported cause of action of Violations of the Texas Disciplinary Rules of Professional Conduct.

Additionally, Bollinger showed how Amrhein's claims of breach of fiduciary duty, breach of contract, fraud, negligent misrepresentation, violations of the DTPA, and violations of the Texas Rules of Civil Procedure were impermissibly fractured legal malpractice claims. (1 CR 147-148). But Amrhein presented no controlling legal authority or argument that these causes of action somehow escaped the impermissible-fracture rule. (1 CR 167-170). Therefore, the trial court correctly found that these claims were impermissibly fractured claims for legal malpractice and warranted dismissal. *See Murphy v. Gruber*, 241 S.W.3d

689, 693 (Tex. App.—Dallas 2007, pet. denied); *see also Averitt v. PriceWaterhouseCoopers, LLP*, 89 S.W.3d 330, 333 (Tex. App.—Fort Worth 2002, no pet.). Amrhein's cause of action of breach of fiduciary duty was appropriately dismissed because she failed to present any argument that Bollinger received an improper benefit from the representation. *See J.A. Green Dev. Corp. v. Grant Thornton, LLP*, No. 05-15-00029-CV, 2016 WL 3547964, at *6 (Tex. App.—Dallas June 28, 2016, pet. denied).

Next, Amrhein's Response contained nothing more than conclusory arguments of fraud and misrepresentation against Bollinger. (1 CR 175, 177, 178, 180, 185, 186, 188). For example, Amrhein argued "Frauds . . . have basis in well-established laws & facts, so Rule 91a motion must be denied." (1 CR 186). Additionally, Amrhein relied on extrinsic evidence to support this cause of action, which is forbidden by Rule 91a.6. (*See* 1 CR 188). Regarding Amrhein's fraud and misrepresentation claims brought in her representative capacity, those claims were improper because Amrhein, a non-lawyer, could not represent the interests of another person, deceased person or entity as a *pro se* litigant. (1 CR 445); *see also Kaminetzky v. Newman*, No. 01-10-01113-CV, 2011 WL 6938536, at *2 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, no pet.). Also, Amrhein's fraud allegations did not entitle her to the relief sought because she failed to plead the existence of false material representations, reliance on these representations, or a

resulting injury. *See Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am*., 341 S.W.3d 323, 337 (Tex. 2011).

Amrhein failed to provide argument or authority refuting Bollinger's argument and evidence that her DTPA claim was barred by the professional services exemption. Amrhein relied on her extrinsic affidavit to contradict Bollinger's assertion of the professional services exemption under the DTPA. (1 CR 152, 159-189). However, pursuant to Rule 91a.6, reliance on extrinsic evidence is forbidden when ruling on a Rule 91a motion. Moreover, a DTPA claim of this nature is impermissibly fractured in this context, and Amrhein's allegations of a DTPA violation had no basis in law because she alleged no facts in support of her claim. *See Brennan v. Manning*, 2007 WL 1098476 at *4-5 (Tex. App.—Amarillo 2007, pet. denied) (mem. op.). Thus, the DTPA cause of action was properly dismissed.

Amrhein's purported "Bad Faith" cause of action was properly dismissed because Amrhein failed to show any legal authority establishing that this is a valid cause of action in Texas. (1 CR 152, 159-189).

Amrhein failed to refute Bollinger's argument that Amrhein was precluded from bringing a negligent misrepresentation claim against an attorney with whom she was in a contractual relationship. (1 CR 153-154, 159-189). Amrhein's claim did not, therefore, amount to causes of action separate from her legal malpractice

claim. *See McCamish v. F.E. Appling Interests*, 991 S.W.2d 878, 792 (Tex. 1999); *McLendon v. Johnson & Wortley, P.C.*, 2000 WL 264213, *4 (Tex. App.—Dallas Mar. 9, 2000, pet. denied). Consequently, Amrhein's negligent misrepresentation claims were properly dismissed.

Amrhein's conspiracy claim was properly dismissed because she provided no facts to support her claim and no authority showing that her cause of action could survive a Rule 91a motion to dismiss. (1 CR 154, 159-189). Amrhein did not controvert the authority that holds that a partner of a law firm and a law firm are not able to form a conspiracy. *See Crouch v. Trinque*, 262 S.W.3d 417, 427 (Tex. App.—Eastland 2008, no pet.).

Amrhein's vague allegation that Bollinger violated her constitutional rights was also properly be dismissed. (1 CR 155-156). Amrhein failed to show any authority that Bollinger was a state actor who deprived her of her rights. (1 CR 159-189). Thus, the trial court properly dismissed Amrhein's allegations of violations of her constitutional rights.

Last, Amrhein's vague allegations of discrimination were properly dismissed because she alleged no facts in support. *See* Rule 91a.2; (1 CR 156-157, 159-189).

In sum, Amrhein has not provided this Court with any reason to reverse the trial court's Rule 91a dismissal and such order must be affirmed.

PRAYER

For the foregoing reasons, Appellees ask this Court to affirm the trial court's judgment. Appellees also request all other appropriate relief to which they are entitled.

Respectfully submitted,

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RULE 9.4 CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 14,997 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Katherine Elrich
KATHERINE ELRICH

CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served via e-service, e-mail and U.S. First Class Mail to Appellant, *pro-se*, on the 8th day of March 2019.

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